

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

| | | |
|--------------------|---|---------------------------------|
| ZIH Corp., |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 03 CV 12358DPW |
| |) | (Alexander, M.J.) |
| v. |) | |
| |) | |
| PAXAR Corporation, |) | |
| |) | |
| Defendant. |) | |
| |) | |

AMENDED LOCAL RULE 16.1 JOINT STATEMENT

Pursuant to Fed. R. Civ. P. 26(f), Local Rule 16.1, the Court's Notice of Scheduling Conference and Order for Joint Statement and Certifications, and the Court's Order dated December 20, 2004, Plaintiff ZIH Corp. ("ZIH") and Defendant PAXAR Corporation ("Paxar Corp.") have conferred with a view to establishing a schedule for discovery and other pretrial events. Having so conferred, the parties have agreed to and propose the following schedule:

PRE-DISCOVERY DISCLOSURES

The parties will exchange Rule 26(a)(1) disclosures by March 9, 2005.

DISCOVERY PLAN

The parties propose the following discovery plan:

1. Discovery will be needed on the following subjects:

- a. Paxar's alleged infringement and non-infringement of U.S. Patent Nos. 5,813,343 ("the '343 patent") and 5,860,753 ("the '753 patent");
- b. Paxar's alleged willful infringement and alleged non-willful infringement of the '343 and '753 patents;
- c. Prior art and alleged invalidity of the '343 and '753 patents;

- d. Alleged unenforceability of the '343 and '753 patents;
- e. ZIH's alleged failure to comply with 35 U.S.C. § 287; and
- f. ZIH's alleged damages.

2. Except as provided herein, the parties propose no changes to the limitations on discovery imposed under the Federal Rules of Civil Procedure. The parties clarify that depositions pursuant to Rule 30(b)(6) shall constitute a single deposition even though the parties may depose multiple persons with relevant knowledge. The parties may take more than one deposition pursuant to Rule 30(b)(6) of a party. Each deposition of a party pursuant to Rule 30(b)(6) must cover different topics than any other deposition of that party and must otherwise conform to the requirements for depositions of Rule 30. Each deposition of a party pursuant to Rule 30(b)(6) shall be counted to determine the number of depositions taken by a party under Rule 30. The parties agree that, for purposes of counting such depositions, the parties will count seven hours of deposition time as a single deposition under the guidelines set forth in Fed. R. Civ. P. 30(d).

3. The parties agree that there will be no limit on the number of document requests and requests for admission that may be served upon another party.

4. The parties will complete fact discovery by September 1, 2005.

5. Expert Reports under Fed. R. Civ. P. 26(a)(2)(B) for the party bearing the burden of proof are due by October 3, 2005. The parties' Expert Rebuttal Reports are due November 1, 2005.

6. The parties will complete expert discovery by December 1, 2005.

OTHER ITEMS

1. The parties shall have until June 7, 2005 to move to join additional parties and to amend the pleadings.

The second Ohio litigation, *Paxar Americas, Inc. v. ZIH et al*, Civil Action No. C-3-03-417, is a declaratory judgment action involving the same patents at issue in this lawsuit. Pursuant to a stipulated motion by the parties, the Ohio Court stayed the second Ohio litigation pending this Court's determination of Paxar Corp.'s transfer motion. Under this stipulation of the parties, if this litigation was not transferred to Ohio, the second Ohio litigation would be transferred to Boston for consolidation. The parties will be preparing joint motions to transfer and consolidate that second Ohio litigation. Additionally, before the second Ohio litigation was stayed, Paxar Americas filed a Motion to Strike aspects of ZIH's Answer to Paxar's Complaint. ZIH's Opposition to that Motion was also stayed pending the determination of venue.

2. The parties must file motions potentially dispositive of a claim or defense on or before December 15, 2005. Oppositions to such motions must be filed within thirty days thereafter. Replies in support of the motions must be filed within twenty-one days after the filing of Oppositions.

3. The parties request a final pretrial conference on March 15, 2006.

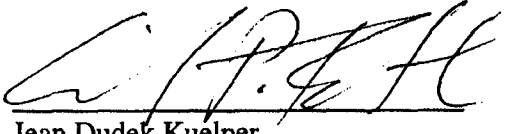
4. This case should be ready for trial by April 3, 2006.

5. The parties do not both consent to trial before a Magistrate Judge.

6. The parties' respective certifications pursuant to Local Rule 16.1(D)(3) are attached as Exhibits A and B.

Date: January 10, 2005

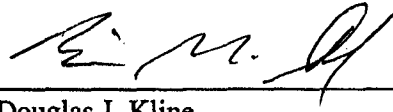
Respectfully Submitted,



Jean Dudek Kuelper
James M. Hafertepe
Sandra A. Frantzen
McANDREWS, HELD & MALLOY, LTD.
500 W. Madison Street, 34th Floor
Chicago, IL 60661
312-775-8000

Lee Carl Bromberg (BBO # 058480)
Erik Paul Belt (BBO # 558620)
John F. Ward (BBO # 646689)
Bromberg & Sunstein LLP
125 Summer Street
Boston, MA 02110-1618
617-443-9292

ATTORNEY FOR DEFENDANT
Paxar Corporation



Douglas J. Kline
William A. Meunier
Brian M. Gaff (642297)
TESTA, HURWITZ & THIBEAULT LLP
125 High Street
Boston, MA 02110
617-248-7000

ATTORNEY FOR PLAINTIFF
ZIH Corp.